District Court of the United States for said district a libel for the seizure and condemnation of 129 cases of tomato pulp, remaining unsold in the original unbroken packages at Birmingham, Ala., alleging that the article had been shipped on or about March 14, 1918, by the Jacob Dold Packing Co., Atlanta, Ga., and transported from the State of Georgia into the State of Alabama, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part, "Diamond Brand Tomato Pulp."

Adulteration of the article was alleged in the libel for the reason that it consisted in whole or in part of a filthy, decomposed, and putrid animal or vegetable substance.

On September 24, 1919, no claimant having appeared for the property, a decree of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

C. F. MARVIN, *Acting Secretary of Agriculture.*

7656. Adulteration of tomato pulp. U. S. * * * v. 175 Cases * * * of a Product Purporting to be Tomato Pulp. (F. & D. Nos. 8731, 8732, 8733, 8734, 8735. I. S. No. 8849-p. S. No. C-796.)

On January 18, 1919, the United States attorney for the District of Indiana, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 175 cases * * * of a product purporting to be tomato pulp, remaining unsold in the original unbroken packages at Indianapolis, Ind., alleging that the article had been shipped on or about October 1, 1917, by the Booth Packing Co., Baltimore, Md., and transported from the State of Maryland into the State of Indiana, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part "Diamond Brand Tomato Pulp."

Adulteration of the article was alleged in the libel for the reason that it consisted in part of a decomposed vegetable substance.

On December 27, 1919, no claimant having appeared for the property, a default decree of condemnation and forfeiture was entered, and it was ordered by the court that the product be destroyed by the United States marshal.

C. F. MARVIN, *Acting Secretary of Agriculture.*

7657. Misbranding of Hall's Texas Wonder. U. S. * * * v. 1 Gross Packages of a Product Labeled "The Texas Wonder, Hall's Great Discovery." Judgment of condemnation, forfeiture, and destruction. (F. & D. No. 9322. I. S. No. 16061-r. S. No. E-1114.)

On September 11, 1918, the United States attorney for the Southern District of Georgia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 1 gross packages of a product, labeled "The Texas Wonder, Hall's Great Discovery," remaining unsold in the original unbroken packages at Macon, Ga., alleging that the article had been shipped on or about August 24, 1918, by E. W. Hall, St. Louis, Mo., and transported from the State of Missouri into the State of Georgia, and charging misbranding in violation of the Food and Drugs Act, as amended. The article was labeled in part, "A Texas Wonder, Hall's Great Discovery. Contains 43% alcohol before diluted, 5% after diluted. The Texas Wonder, Hall's Great Discovery, for Kidney and Bladder Troubles, Diabetes, Weak and Lame Backs, Rheumatism, Dissolves Gravel. Regulates Bladder Trouble in Children. One small bottle is 2 months' treatment. Price $1.25 per bottle. Registered in U. S. Patent Office. E. W. Hall, sole manufacturer, St. Louis, Missouri, etc."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it consisted essentially of balsam of copaiba, turpentine, rhubarb, colchicum, alcohol, and water.

Misbranding of the article was alleged in the libel in substance for the reason that the above-quoted statements were false and fraudulent, said product containing no ingredients or combination of ingredients capable of producing the curative or therapeutic effects claimed for it.

On January 11, 1919, E. W. Hall, claimant, having filed a claim and answer, and the case having come on for hearing before the court and a jury, and the jury having returned a verdict for the Government, judgment of condemnation and forfeiture was entered January 15, 1919, and it was ordered by the court that the product be forfeited to the United States and destroyed by the United States marshal.

The following charge was delivered to the jury by the court (Evans, *D. J.*):

GENTLEMEN OF THE JURY: This is a proceeding instituted under what is known as the Pure Food and Drugs Act. Congress enacted a statute the purpose of which is to protect from imposition people and the public, against people who wanted to take advantage of the public by imposing upon them deteriorated or misbranded goods.

This proceeding is what is known as a libel in rem, upon information of the district attorney, wherein it is alleged that a certain product, or medicine, known as "A Texas Wonder," in the jurisdiction of this court, had been transported in interstate commerce from the city of St. Louis, Mo., to the city of Macon, Ga., and that this product was misbranded; that the carton, the box in which the product was contained bore the statement: "A Texas Wonder Hall's Great Discovery. Contains 43% alcohol before diluted; 5% after diluted. The Texas Wonder, Hall's Great Discovery, for Kidney and Bladder Troubles, Diabetes, Weak and Lame Backs, Rheumatism, Dissolves Gravel, Regulates Bladder Troubles in Children." The libel alleges that that constituted a misbranding, in that this compound did not have the therapeutic effects that it is represented to have, and that the statement on the carton that it did have such therapeutic effect was false and fraudulent. Now, under this libel, certain quantities of this product was seized; and the originator or manufacturer of the compound has filed a claim. In that claim he traverses the allegations of the Government, and contends that no false statements were contained in the carton. Now that is the issue for you to try.

There is a stipulation between the district attorney and counsel for the claimant, which relieves you of passing upon some questions in the case. It is agreed that the product described in the libel, as amended, was shipped in interstate commerce as set forth in the libel, and that the said product was secured from the consignee as described in said libel by an inspector of the Bureau of Chemistry of the United States Department of Agriculture, and that it was sealed and delivered to an analyst, Nathan K. Nelson, in the identical condition in which it was collected by the inspector.

The issue thus left from the pleadings for you to determine is whether or not the statements on the carton are false and fraudulent. You are instructed that it is necessary for the Government to prove that such statements are false and fraudulent, the burden is upon the Government; and if you do not believe the Government has proved this by a preponderance of the testimony you will find for the claimant.

In passing upon that issue you are the judges of the evidence and the credibility of the witnesses. In determining the credibility of any witness you may consider his appearance and demeanor upon the stand, his interest or want of interest in the case, his prejudice or bias, if any appears, his means and opportunity of knowing the facts to which he testifies, the reasonableness or unreasonableness of the testimony. All of these matters may be considered by you in determining whether any witness has sworn truly or falsely. You should impute perjury to no witness. If you find there is any conflict in the testimony determine whether the conflict is real or apparent; if the conflicts are only apparent, it would be your duty to reconcile them; if they are real and irreconcilable, ascertain the truth of the case, and there base your verdict.

The contention of the Government is that this statement is false, and it becomes necessary, in that connection, for me to construe for you the meaning of

this statement, the branding on this carton. "A Texas Wonder Hall's Great Discovery * * * for Kidney and Bladder Troubles, Diabetes, Weak and Lame Backs, Rheumatism," is not a statement that it is a specific for the cure of those diseases, but it is a statement that it is recommended that it would have a therapeutic or curative effect in the treatment of those diseases. The further statement, that it dissolves gravel, is a statement of fact; it is an assertion, an affirmative assertion of the originator of this compound, that it will have the effect, if taken according to directions, of dissolving gravel in the human body; and also that it will have the effect of regulating bladder trouble in children. That is the statement upon this carton. It is recommended that it will have a therapeutic effect in the treatment of kidney and bladder troubles, diabetes, weak and lame backs, and rheumatism; it is a statement of fact that it dissolves gravel and regulates bladder trouble in children.

Now, the first question for you to determine is whether or not that statement is false. The Government has introduced as a witness the chemist, and, according to my recollection of his testimony, he says that this compound or concoction consists of three main ingredients; that is, that he found pine oil and alcohol, and I believe copaiba, and found rhubarb and colchicum in combination. That is simply my recollection; if you differ with me, of course your recollection controls. The chemist says that these are in the proportion that he testified, consisting of a very large per cent of alcohol and some water, less than 50 per cent of the medicinal ingredients. On that question the claimant joins issue with the Government. He testifies that it contains certain other ingredients, the nature of which he did not disclose; that under the Pure Food and Drugs Act it is improper on the part of the Government to require a disclosure of the contents of his formula. That is one of the questions for you to decide—whether or not that product has been analyzed chemically correctly; whether or not the analysis given by the chemist contains, substantially, the medicinal ingredients alleged, or whether he has omitted some important drug which the claimant contends is in it. That is the first question.

In passing upon the question as to the alleged falsity of the statement you may consider the testimony of the doctors, the medical men, brought forward by the Government, as to whether or not a concoction containing the ingredients described by the chemist has any therapeutic effect for the treatment of the diseases named on this carton. The doctors testify that they have no really curative effect. They say, further, as to some diseases, they are structural and not functional, and that they are incurable by any medicine known to the pharmacopœia; they contend, and they swear, that such diseases as chronic Bright's, or tuberculosis of the kidney or bladder are incurable by any known medicinal aid. The claimant in this case joins issue with these gentlemen. You are to pass upon that question—as to whether or not those diseases are curable, and whether or not any of them would be remedied or relieved by the use of this medicine. If you believe that the Government has established that it had no curative or therapeutic effect, then that would be a false statement; and then you would go to another phase of the case, which I will charge you further on.

Now, the defendant produces a number of nonprofessional witnesses, who testify that they had on various occasions various disorders, and that they took this compound with beneficial results; and that it had not been misbranded, because in their own experience it had distinctly beneficial therapeutic effects. The Government contends that that testimony is not to be accepted in lieu of the testimony of doctors, professional men, for the reason that these witnesses are nonexperts, and are not supposed to know the anatomy and physiology of the human system; that they are not prepared to say whether the disease was idiopathic, or organic, or whether it was simply a symptom of some diseased condition. For instance, take the disease commonly called dropsy; it is frequently referred to as an independent disease, when it is known that dropsy is one of the symptoms of Bright's disease, and in the last stages of cirrhosis of the liver; and when a man says he has dropsy he would not say whether he had cirrhosis of the liver or Bright's disease. On the other hand, it is contended by the claimant that these witnesses had serious disorders, and that they were manifested by certain symptoms; and that irrespective of their diagnosis, professional diagnosis, that they were suffering from these diseases, and that they were relieved.

You take all this into consideration and determine whether this particular compound has a therapeutic effect in the treatment of these diseases for which it is recommended.

With reference to one of these diseases, it is a statement of fact—that it will have the effect of dissolving gravel. The Government contends that that is a false statement—that there is no formula, no medicine, taken into the human system, that will have the effect of dissolving gravel but what would also destroy the tissues of the body, and that that statement is absurd. The claimant denies that contention. That is one of the questions for you to consider, that is, whether that is a false statement. If this compound will not dissolve gravel, then that is a false statement. On the other hand, if it will dissolve gravel, it is not a false statement.

The Government does not charge that colchicum can not be used as a remedial agency, under certain circumstances; neither does it insist but what rhubarb may have its use in the medical pharmacopœia, but the Government contends that the union of these various ingredients into this product, of the character established—that although they may have a use for some particular purpose, when brought together as in this compound, they have no therapeutic effect, as recommended in this label.

If you reach the conclusion on this question that that is a false statement, the next question you would consider is whether or not it was a fraudulent statement.

The word fraudulent means guilty intent, that is, that the claimant intended to defraud those who should buy Hall's Great Discovery, Texas Wonder. If he honestly believed that Texas Wonder would do what he claimed it would do, then it was not fraudulently misbranded, within the terms of the law, and you should find for the claimant. If you should find that it is a false statement, then in passing upon the question as to whether it was also fraudulent, you may take into consideration the chemical contents of the concoction as proven. You may consider also the therapeutic skill and knowledge of the originator of the concoction. The claimant admits that in his early life he was deprived of educational advantages, except in the common school; that he did not attend a medical college; that he is not a doctor. He contends that he stayed with doctors, went around the country with them, rode with them, and associated with them. He contends that he was afflicted with certain disorders of the nature that he recognized this compound to be a beneficial medical agent for; and that experimenting upon himself and upon others he discovered that this union of the ingredients would be beneficial in the treatment of the diseases named on this carton; and that in that way he derived a good technical and medical knowledge of them. You take into consideration the fact as to whether a man without chemical knowledge, without laboratory experience, can medicinally understand the remedial effects of such drugs as this concoction is shown to have had in it; and determine whether or not that testimony is to be relied upon and accepted in preference to the chemist's who made the laboratory test, the chemical analysis.

There is another element that enters into the question of fraudulent intent, and perhaps the controlling element—as to whether or not this claimant honestly believed that this concoction was a cure—not a specific—but would have a remedial, a therapeutic effect upon the persons suffering with the diseases named on the carton. If he believed that, if you find that it was an honest transaction in that respect, then he would not be guilty of fraudulent intent. In passing upon that question you take into consideration all the facts of the case; determine as to whether his knowledge is that of a person who understands the effect of it, or whether or not it is the statement of a mere faker or charlatan who desires to impose upon the public a formula for sale for the making of money.

Other matters may be considered by you in determining as to the fraudulent intent; one matter as to the wording of the statement on the carton. It seems that the claimant has been engaged in the manufacture of this compound for several years, and that, perhaps, there has lately been some change in the carton; at one time he having on the carton "Dr. E. W. Hall." The Government contends that that is a circumstance going to show that he was undertaking to impress people with the fact that he was a doctor; and it seems that that has been taken off. The Government contends further that the marking, "Hall's Great Discovery"—I believe—has been taken off. The claimant contends that the reason he did that was that he wanted to comply with the demands of one of the Bureaus of Agriculture; and that more recently he has taken off that part of the label which says it will dissolve gravel, although he still firmly believes that it will dissolve gravel; that he removed that from the more recent cartons. You may take all the circumstances, and determine whether or not there was any fraudulent intent, or whether he

was putting it out in the honest belief that it would have all the therapeutic effects it is recommended to have.

Now, it is not necessarily a question as to whether this compound would have a harmful or a harmless effect on people who took it. It may be that those ingredients would have no effect at all; or they may have a harmless effect. That is for you to determine; but the main issue is whether or not they would have the therapeutic effect, that is, whether it was a beneficial formula, a medicinal aid, as recommended on this carton,—whether or not that is false, and whether or not it was made with the intent to defraud.

There has been some allusion to two former trials, one in St. Louis, Mo., and the other one in Texas. The trial in St. Louis was a criminal case, and in that case the defendant was acquitted under instructions from the court. The trial in Texas was a condemnation proceeding, similar to that engaging the attention of the court at present. In the Dallas, Tex., case the jury condemned this medicine as being contained in a carton, which had on it a false and fraudulent statement. That trial occurred some time in July. Now this shipment which is before you, under investigation, was some months after that, I believe the 24th of August. You may consider that testimony, and the information or knowledge given to the claimant in that case—what he derived from the trial of that case as to the Government's contention as to the actual contents, and if you find the Government's contention true about it, that they had no therapeutic effect for the diseases recommended, then, if after that trial he continued to put it upon the market, you can consider that circumstance as bearing on the question as to whether there was any intent to defraud the people by putting the article on the market.

C. F. MARVIN, *Acting Secretary of Agriculture.*

7658. Adulteration and misbranding of an article purporting to be dried sugar-beet meal. U. S. v. 2,942 Sacks of Beet Meal. Consent decree of condemnation and forfeiture. Product ordered destroyed. (F. & D. No. 9047. I. S. No. 8244-p. S. No. C-900.)

On June 4, 1918, the United States attorney for the Eastern District of Wisconsin, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 2,942 sacks of beet meal, more or less, remaining in the original unbroken packages at Milwaukee, Wis., alleging that 1,795 of said sacks had been shipped on or about May 1, 1918, and transported from the State of New Jersey into the State of Wisconsin, that 765 of said sacks had been shipped on April 29 and 30, 1918, and transported from the State of New York into the State of Wisconsin, and that 382 of said sacks had been shipped on May 7, 1918, and transported from the State of Pennsylvania into the State of Wisconsin, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part, "100 Lbs. Dried Sugar Beet Meal * * *."

Adulteration of the article was alleged in the libel for the reason that excessive sand had been mixed and packed therewith so as to reduce and lower and injuriously affect its quality, and for the further reason that it consisted in part of a decomposed vegetable substance.

Misbranding was alleged in substance for the reason that the label upon the sacks containing the article bore the statement regarding it that the same was "sugar beet meal," which statement was false and misleading in that the article was not sugar-beet meal, but was, in truth and in fact, a mixture of sugar-beet tops, crowns, and tails and sand. Misbranding was alleged for the further reason that the label upon the sacks containing the article bore the statement regarding it that the same was "sugar beet meal" in such form and display on said label as to give the impression that it was pure sugar-beet meal, whereas, in truth and in fact, it was not, but was a mixture in which a sand product had been mixed and packed with sugar-beet tops, crowns, and